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**Sent:** Tuesday, July 24, 2012 10:32 AM  
**To:** Filings@psc.state.fl.us  
**Subject:** 120015-EI SFHHA's Motion to Compel FPL to Respond to Certain Requests for PODs  
**Attachments:** SFHHA Motion to Compel.pdf

Electronic Filing

- a. Person responsible for this electronic filing:  
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- b. Docket No. 120015-EI.
- c. Document being filed on behalf of South Florida Hospital and Healthcare Association (SFHHA).
- d. There is a total of 9 pages.
- e. The document attached for electronic filing is SFHHA's Motion to Compel FPL to Respond to Certain Requests For Production of Documents.  
(See attached SFHHA Motion to Compel.pdf)

Thank you for your attention and cooperation to this request.

Regards.

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7/24/2012

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition for rate increase by Florida  
Power & Light Company**

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§  
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**Docket No.: 120015-EI**

**Dated: July 24, 2012**

**SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S  
MOTION TO COMPEL FLORIDA POWER & LIGHT COMPANY  
TO RESPOND TO CERTAIN REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Florida Rules of Civil Procedure ("Fla. R. Civ. P.") 1.350(a), Fla. R. Civ. P. 1.380(a)(2) and Rule 28-106.204 of the Florida Administrative Code, the South Florida Hospital and Healthcare Association ("SFHHA") hereby moves to compel Florida Power & Light Company ("FPL") to fully respond and provide documents responsive to SFHHA's First Request for Production of Documents Nos. 8 and 87. In support hereof, SFHHA states as follows:

1. On March 30, 2012, SFHHA served its First Request for Production of Documents on FPL.
2. Request No. 8, and FPL's response to that Request, are quoted below:

**Q.**

General: With regard to the January 25, 2011 Earnings Conference Call materials, page 46, please provide all documents that discuss or quantify risks identified in the second and third indented bullet points under the paragraph that begins ("NextEra Energy conducts its competitive energy business . . . .") on page 46.

**A.**

Consistent with FPL's general objection to requests for affiliate information that does not affect FPL's rates or costs of service, FPL has no responsive documents.

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3. Request No. 87, and FPL's response to that Request, are quoted below:

**Q.**

Regarding Morley at 7:6-8: Please produce all documents that discuss generation planning by FPL, and/or set forth FPL's plans concerning the addition, retirement or modification of generating plants, that were prepared by on behalf of FPL during the period January 1, 2008 to the present, including, but not limited to, each of FPL's ten-year power plant site plans.

**A.**

Please see FPL objections previously served on April 16, 2012. Notwithstanding that objection, FPL's ten-year power plant site plans for the years 2008 to the present can be found at the Florida Public Service Commission website.

No other information or documentation was provided.

4. In FPL's objections to SFHHA's First Request for Production of Documents, served April 16, 2012, FPL did not provide any specific objections in response to Request No. 8. However, the general objection regarding affiliate information, referenced in FPL's response to Request No. 8, states:

FPL objects to each and every discovery request that calls for the production of documents and/or disclosure of information from NextEra Energy, Inc. and any subsidiaries and/or affiliates of NextEra Energy, Inc. that do not deal with transactions or cost allocations between FPL and either NextEra Energy, Inc. or any subsidiaries and/or affiliates. Such documents and/or information do not affect FPL's rates or costs of service to FPL's customers.

5. With respect to Request No. 87, FPL raised a specific objection alleging that the request was unduly burdensome. FPL argued that production of the documents requested "would likely result in hundreds of thousands, if not millions, of pages."

6. Following multiple conference calls among counsel, during which SFHHA (i) identified certain requests to which FPL had not sufficiently responded and (ii) explained the information sought and discussed means to limit any undue burden otherwise imposed by the requests, FPL provided, *inter alia*, a supplemental response to Request No. 87:

**A.**

Consistent with FPL's general objections, the Company objects to providing documents that are not relevant to the subject matter of this docket. Notwithstanding the foregoing, FPL is providing publicly available documents related to its generation planning during the period January 1, 2008 to the present.

With this supplemental response, FPL provided one 2011 Site Plan Workshop Presentation and several sets of testimony and exhibits that had been previously filed in various proceedings before the Commission.

7. FPL did not provide a supplemental response to Request No. 8.

8. The Florida Public Service Commission's discovery practice is governed by the Florida Rules of Civil Procedure. Those Rules provide liberal discovery rights to parties. For example, Rule 1.280(b)(1) states:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Therefore, a matter is discoverable if it is relevant to the subject matter of the pending action and is reasonably calculated to lead to the discovery of admissible evidence. SFHHA's Requests Nos. 8 and 87 meet this standard.

9. Request No. 8 seeks information regarding the quantification of risks identified by NextEra Energy in certain conference call materials. The material referenced in Request No. 8 states:

There can be significant volatility in market prices for fuel, electricity and renewable and other energy commodities. NextEra Energy Resources' inability or failure to hedge effectively its assets or positions against changes in commodity prices, volumes, interest rates, counterparty credit risk or other risk measures could significantly impair NextEra Energy's results of operations.

A portion of NextEra Energy Resources' power generation facilities operate wholly or partially without long-term power purchase agreements. As a result, power from these facilities is sold on the spot market or on a short-term contractual basis, which may increase the volatility of NextEra Energy's results of operations.

10. FPL's return on equity testimony and corporate credit ratings are impacted by affiliate activity. FPL's objection in the text of its response that it will not provide any "affiliate information that does not affect FPL's rates or costs of service" is not well founded.

11. NextEra Energy Resources' activities and the risks it undertakes plainly impact FPL's rates and costs of service via FPL's claimed return on equity, credit rating and capital structure. In particular, FPL's witnesses have testified regarding FPL's risk, while citing in support the consolidated corporate credit rating of the affiliated companies. For example, Dr. Avera specifically relied on an April 18, 2011 S&P analysis concerning FPL's credit rating. The first line of that credit report states, "[t]he ratings on [FPL] are based on the consolidated credit profile of its parent, diversified energy holding company NextEra Energy, Inc." Naturally, the risk of the parent company is influenced by the asset that it holds. The report explains, "[t]he ratings on all NextEra entities reflect the strength of the regulated cash flows from integrated utility [FPL], and the diverse and substantial cash generation capabilities of its unregulated operations at subsidiary NextEra Energy Resources (NER)." In other words, S&P's issuer credit rating for FPL was not based on FPL alone but based upon the combined risks of all of NextEra Energy Inc.'s affiliates. Since FPL justified its ROE based upon its consolidated corporate credit rating from S&P, then discovery is necessary to ascertain the risk of the other affiliated

companies included in S&P's analysis. Therefore, FPL's objections should be disregarded. Because Request No. 8 is relevant to the subject matter of this proceeding and reasonably calculated to lead to the discovery of admissible evidence, FPL should be compelled to fully respond to the request and provide all responsive documents thereto.

12. Request No. 87 seeks documents discussing generation planning by FPL. SFHHA is in possession of FPL's ten-year power plant site plans for the years 2008 to the present. However, SFHHA is also seeking internal planning documents reflecting the thought processes that led to what ultimately appears in the ten-year power plant site plans provided by FPL. SFHHA has notified FPL that it is willing to limit this Request to non-privileged material discussions. Such discussions may be found in internal memoranda or other documents reflecting internal company discussions. SFHHA does not seek computer runs, bare calculations or other such minutiae. Despite this limitation, no responsive information has yet been provided by FPL. SFHHA requests these internal material discussions in order to test the details and consistency of FPL's internal forecasting, planning and long-term goals. The internal discussions may provide relevant information regarding allocation of costs among customer classes because the methodology used to assign such costs should take into consideration class responsibility for causing FPL to add additional generating facilities. Relevant information regarding cost responsibility may be discussed in internal memoranda. Additionally, internal information regarding FPL's views regarding the need for additional generation may be relevant for determining the accuracy of FPL's projection of revenues, and as a result, the determination of appropriate billing determinants. The underlying information sought in Request No. 87 thus is relevant to the subject matter of this proceeding and the Request is reasonably calculated to lead to the discovery of admissible evidence.

13. As described above, FPL's objections are not well founded and do not justify the lack of response thus far provided. FPL's refusal to respond fully to Request Nos. 8 and 87, as limited by SFHHA is subsequent conversations with FPL, constitute a failure by FPL to comply with its discovery obligations. Unless the Commission compels FPL to respond, SFHHA's ability to prepare its case as customers of FPL will be impaired. For the reasons detailed herein, the Commission should require FPL to respond fully to SFHHA's First Request for Production of Documents Nos. 8 and 87.

14. SFHHA has conferred with FPL's counsel regarding Request Nos. 8 and 87 and this Motion. SFHHA and FPL were unable to resolve the matters raised herein. If additional discussions and negotiations narrow the issues raised herein, SFHHA will so inform the Commission.

WHEREFORE, SFHHA moves for an order compelling FPL to respond fully within five (5) days to SFHHA's First Request for Production of Documents Nos. 8 and 87.

Respectfully submitted,

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July 24, 2012

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Compel Florida Power & Light Company to Respond to Certain Requests for Production of Documents has been furnished by electronic mail and/or U.S. mail to the following parties on this 24th day of July, 2012 to the following:

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